

SENATE BILL No. 450

DIGEST OF INTRODUCED BILL

Citations Affected: IC 23-1.

Synopsis: Business corporation law. Makes changes and additions to business corporation law provisions concerning the following: (1) requirements for, effective dates of, and corrections of documents; (2) appealing a refusal of a filing of a document; (3) definitions; (4) notice requirements; (5) corporate names; (6) terms and conditions of rights, options, and warrants for the purchase of shares or other securities; (7) meetings of shareholders; (8) record dates for determining shareholders entitled to demand a special meeting; (9) terms of office of directors; (10) effective date of a notice of resignation; (11) actions taken by board of directors without a meeting; (12) standards of conduct for directors; (13) conversion; (14) bylaws; (15) merger or share exchange; (16) disposition of assets; and (17) dissenters' rights. Repeals a provision that requires a corporation to report to shareholders an indemnification or advance of expenses to a director and the issuance of shares for a promissory notes or for promises to render services.

Effective: July 1, 2009.

Bray

January 14, 2009, read first time and referred to Committee on Judiciary.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 450

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 23-1-18-1, AS AMENDED BY P.L.130-2006,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 1. (a) A document must satisfy the requirements
4 of this section, and of any other section that adds to or varies these
5 requirements, to be entitled to filing by the secretary of state.

6 (b) This article must require or permit filing the document in the
7 office of the secretary of state.

8 (c) The document must contain the information required by this
9 article. It may contain other information as well.

10 (d) The document must be **legible**, typewritten or printed ~~legible~~, or,
11 **if electronically transmitted, in a format that can be retrieved in a**
12 **reproduced or typewritten form**, and otherwise suitable for
13 processing.

14 (e) The document must be in the English language. A corporate
15 name need not be in English if written in English letters or Arabic or
16 Roman numerals, and the certificate of existence required of foreign
17 corporations need not be in English if accompanied by a reasonably



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1 authenticated English translation.

2 (f) The document must be ~~executed~~ **signed**:

3 (1) by the chairman of the board of directors of the domestic or
4 foreign corporation or by any of its officers;

5 (2) if directors have not been selected or the corporation has not
6 been formed, by an incorporator;

7 (3) if the corporation is in the hands of a receiver, trustee, or other
8 court appointed fiduciary, by that fiduciary; or

9 (4) for purpose of annual or biennial reports, by:

10 (A) a registered agent;

11 (B) a certified public accountant; or

12 (C) an attorney;

13 employed by the business entity.

14 (g) Except as provided in subsection (m), the person ~~executing~~
15 **signing** the document shall sign it and state beneath or opposite the
16 signature the person's name and the capacity in which the ~~person signs~~.
17 **document is signed**. A signature on a document authorized to be filed
18 under this article may be:

19 (1) a facsimile; or

20 (2) made by an attorney in fact.

21 (h) A power of attorney relating to the signing of a document
22 authorized to be filed under this article by an attorney in fact may but
23 is not required to be:

24 (1) sworn to, verified, or acknowledged;

25 (2) signed in the presence of a notary public;

26 (3) filed with the secretary of state; or

27 (4) included in another written agreement.

28 However, the power of attorney must be retained in the records of the
29 corporation.

30 (i) A document authorized to be filed under this article may but is
31 not required to contain:

32 (1) the corporate seal;

33 (2) an attestation by the secretary or an assistant secretary; and

34 (3) an acknowledgment, verification, or proof.

35 (j) If the secretary of state has prescribed a mandatory form for the
36 document under section 2 of this chapter, the document must be in or
37 on the prescribed form.

38 (k) The document must be delivered to the office of the secretary of
39 state for filing as described in section 1.1 of this chapter and the correct
40 filing fee must be paid in the manner and form required by the
41 secretary of state.

42 (l) The secretary of state may accept payment of the correct filing

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fee by credit card, debit card, charge card, or similar method. However, if the filing fee is paid by credit card, debit card, charge card, or similar method, the liability is not finally discharged until the secretary of state receives payment or credit from the institution responsible for making the payment or credit. The secretary of state may contract with a bank or credit card vendor for acceptance of bank or credit cards. However, if there is a vendor transaction charge or discount fee, whether billed to the secretary of state or charged directly to the secretary of state's account, the secretary of state or the credit card vendor may collect from the person using the bank or credit card a fee that may not exceed the highest transaction charge or discount fee charged to the secretary of state by the bank or credit card vendor during the most recent collection period. This fee may be collected regardless of any agreement between the bank and a credit card vendor or regardless of any internal policy of the credit card vendor that may prohibit this type of fee. The fee is a permitted additional charge under IC 24-4.5-3-202.

(m) A signature on a document that is transmitted and filed electronically is sufficient if the person transmitting and filing the document:

- (1) has the intent to file the document as evidenced by a symbol executed or adopted by a party with present intention to authenticate the filing; and
- (2) enters the filing party's name on the electronic form in a signature box or other place indicated by the secretary of state.

(n) As used in this subsection, "filed document" means a document filed with the secretary of state under any provision of this title except for IC 23-1-49 or IC 23-1-53-3. As used in this subsection, "plan" means a plan of domestication, nonprofit conversion, entity conversion, merger, or share exchange. Whenever a provision under this article permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following apply:

- (1) The manner in which the facts will operate upon the terms of the plan or filed document:**
 - (A) shall be set forth in the plan or filed document; and**
 - (B) shall state the manner in which the facts shall become operative.**
- (2) The facts may include, but are not limited to:**
 - (A) any of the following that is available in a nationally recognized news or information medium either in print or electronically:**

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- (i) Statistical or market indices.
- (ii) Market prices of any security or group of securities.
- (iii) Interest rates.
- (iv) Currency exchange rates.
- (v) Similar economic or financial data;

(B) a determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

(C) the terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

(3) The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:

(A) The name and address of any person required in a filed document.

(B) The registered office of any entity required in a filed document.

(C) The registered agent of any entity required in a filed document.

(D) The number of authorized shares and designation of each class or series of shares.

(E) The effective date of a filed document.

(F) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

(4) If a provision of a plan or filed document is made dependent on a fact ascertainable outside the plan or filed document, and that fact is not ascertainable by reference to a source described in subdivision (2)(A) or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, the corporation shall file with the secretary of state articles of amendment setting forth the fact promptly after the time the fact referred to is first ascertainable or changes. Articles of amendment under this subdivision:

(A) are considered to be authorized by the authorization of the original plan or filed document or plan to which the articles of amendment relate; and

(B) may be filed by the corporation without further action by the board of directors or the shareholders.

SECTION 2. IC 23-1-18-4 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) Except as provided in subsection (b) and section 5(c) of this chapter, a document accepted for filing is effective:

(1) at the time of filing on the date it is filed, as evidenced by **means** the secretary of ~~state's date and time endorsement state uses for endorsing the date and time of filing~~ on the original document; or

(2) at such later time on the date it is filed as is specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at 12:01 a.m. on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.

SECTION 3. IC 23-1-18-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) A domestic or foreign corporation may correct a document filed by the secretary of state if: ~~the document:~~

(1) **the document** contains an incorrect statement or **an inaccuracy**;

(2) **the document** was defectively ~~executed~~, **signed**, attested, sealed, verified, or acknowledged; or

(3) **the electronic transmission of the document was defective.**

(b) A document is corrected:

(1) by preparing articles of correction that:

(A) describe the document (including its filing date) or attach a copy of it to the articles;

(B) specify the incorrect statement **or inaccuracy** and the reason it is incorrect or the manner in which the execution was defective; and

(C) correct the incorrect statement, **inaccuracy**, or defective execution; and

(2) by delivering the articles to the secretary of state for filing.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons reasonably relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed or when the reliance ceased to be reasonable, whichever first occurs.

SECTION 4. IC 23-1-18-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) If the secretary of state refuses to file a document delivered to the secretary of state's

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office for filing, the domestic or foreign corporation may appeal the refusal to the circuit or superior court of the county where the corporation's principal office (or, if none in Indiana, its registered office) is or will be located **not later than sixty (60) days after the receipt of the document from the secretary of state.** The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

(b) The court may order the secretary of state to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

SECTION 5. IC 23-1-20-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. "Articles of incorporation" ~~includes amended and restated articles of incorporation and articles of merger.~~ **means the original articles of incorporation and all amendments and restatements of the articles of incorporation. If an amendment of the articles of incorporation or any other document filed under this article restates the articles of incorporation in their entirety, the articles of incorporation may not include any prior documents.**

SECTION 6. IC 23-1-20-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8.5. "Electronic transmission" or "electronically transmitted" **means any process of communication not directly involving the physical transfer of paper that is suitable for retention, retrieval, and reproduction of information by the recipient.**

SECTION 7. IC 23-1-20-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. "Entity" includes the following:

- (1) Domestic corporation and foreign corporation.
- (2) Not-for-profit corporation.
- (3) Corporation incorporated under any other statute.
- (4) Profit and not-for-profit unincorporated association.
- (5) Business trust, estate, partnership, trust, and two (2) or more persons having a joint or common economic interest.
- (6) Other entity (as defined in IC 23-1-20-17.5).**
- ~~(6)~~ (7) State, United States, and foreign government.

SECTION 8. IC 23-1-20-17.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17.5. "Other entity" means a

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limited liability company, limited liability partnership, limited partnership, general partnership, business trust, or real estate investment, trust, or any entity that:

(1) is formed under the requirements of applicable law; and

(2) is not a corporation.

SECTION 9. IC 23-1-20-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 29. (a) Notice under this article shall be in writing unless oral notice is authorized by a corporation's articles of incorporation or bylaws. **Notice by electronic transmission is written notice.**

(b) Notice, if otherwise in proper form under this article, may be communicated:

(1) in person;

~~(2) by telephone, telegraph, teletype, or other form of wire or wireless communication; or~~

~~(3) (2) by mail or other method of delivery; or~~

(3) by telephone or other electronic means.

If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published or by radio, television, or other form of public broadcast communication.

(c) Written notice by a domestic or foreign corporation to a shareholder is effective when mailed, if correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

(d) Written notice to a domestic or foreign corporation (authorized to transact business in Indiana) may be addressed to its registered agent at its registered office or to the secretary of the corporation at its principal office shown in the most recent filing of the corporation under this article.

(e) Except as provided in subsection (c), written notice is effective at the earliest of the following:

(1) When received.

(2) Five (5) days after its mailing, as evidenced by the postmark or private carrier receipt, if correctly addressed to the address listed in the most current records of the corporation.

(3) On the date shown on the return receipt, if sent by registered or certified United States mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Oral notice is effective when communicated.

(g) If this article prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation

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or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this article, those requirements govern.

(h) Written notice, including reports or statements from the corporation, to shareholders who share a common address is effective if:

(1) the corporation delivers one (1) copy of a notice, report, or statement to the common address;

(2) the corporation addresses the notice, report, or statement to the:

(A) shareholders either as a group or to each of the shareholders individually; or

(B) shareholders in a form in which each of the shareholders has consented; and

(3) each of the shareholders consents to delivery of a single copy of the notice, report, or statement to the common address of the shareholders.

Consent given under subdivision (3) is revocable by a shareholder who delivers written notice of revocation to the corporation. If a shareholder delivers written notice of revocation to a corporation, the corporation shall begin providing individual notices, reports, or other statements to the shareholder not later than thirty (30) days after delivery of the written notice of revocation.

(i) A shareholder who fails to object to the receipt of the notice, report, or statement at a common address by written notice to the corporation within sixty (60) days after written notice by the corporation of the corporation's intention to send single copies of notices to shareholders who share a common address as permitted by subsection (h) is considered to have consented to receiving a single copy at the common address.

SECTION 10. IC 23-1-23-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) A corporate name:

(1) must contain the word "corporation", "incorporated", "company", or "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", or words or abbreviations of like import in another language; and

(2) except as provided in subsection (e), may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by IC 23-1-22-1 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d), a corporate name must be distinguishable upon the records of the secretary of state

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from:

(1) the corporate name of a corporation or other business entity incorporated or authorized to transact business in Indiana;

(2) a corporate name reserved or registered under section 2 or 3 of this chapter; ~~and~~

(3) a fictitious name adopted by a foreign corporation authorized to transact business in Indiana because the foreign corporation's true name was unavailable; and

~~(3)~~ (4) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in Indiana.

(c) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subsection (b). The secretary of state shall authorize use of the name applied for if:

(1) the other corporation files its written consent to the use, signed by any current officer of the corporation; or

(2) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in Indiana.

(d) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in Indiana if the other corporation is incorporated or authorized to transact business in Indiana and the proposed user corporation:

(1) has merged with the other corporation;

(2) has been formed by reorganization of the other corporation; or

(3) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) A bank holding company (as defined in 12 U.S.C. 1841) may use the word "bank" or "banks" as a part of its name. However, this subsection does not permit a bank holding company to advertise or represent itself to the public as affording the services or performing the duties that a bank or trust company only is entitled to afford and perform.

(f) Except as provided in IC 23-1-49-6, this article does not control the use of fictitious names.

SECTION 11. IC 23-1-26-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(b) The board of directors may authorize shares to be issued for

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1 consideration consisting of any tangible or intangible property or
 2 benefit to the corporation, including cash, promissory notes, services
 3 performed, contracts for services to be performed, or other securities
 4 of the corporation. ~~If shares are authorized to be issued for promissory~~
 5 ~~notes or for promises to render services in the future, the corporation~~
 6 ~~must comply with IC 23-1-53-2(b).~~

7 (c) The corporation may issue shares for such consideration
 8 received or to be received as the board of directors determines to be
 9 adequate. That determination by the board of directors is conclusive
 10 insofar as the adequacy of consideration for the issuance of shares
 11 relates to whether the shares are validly issued, fully paid, and
 12 nonassessable.

13 (d) When the corporation receives the consideration for which the
 14 board of directors authorized the issuance of shares, the shares issued
 15 therefor are fully paid and nonassessable.

16 (e) The corporation may (but is not required to) place in escrow
 17 shares issued for a contract for future services or benefits or a
 18 promissory note, or make other arrangements to restrict the transfer of
 19 the shares, and may (but is not required to) credit distributions in
 20 respect of the shares against their purchase price, until the services are
 21 performed, the note is paid, or the benefits received. If the services are
 22 not performed, the note is not paid, or the benefits are not received, the
 23 shares escrowed or restricted and the distributions credited may be
 24 cancelled in whole or in part.

25 SECTION 12. IC 23-1-26-5 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. **(a)** A corporation,
 27 acting through its board of directors, may create or issue rights, options,
 28 or warrants for the purchase of shares or other securities of the
 29 corporation or any successor in interest of the corporation. The board
 30 of directors shall determine the terms upon which the rights, options,
 31 or warrants are issued, their form and content, and the consideration for
 32 which the shares or other securities are to be issued. The rights,
 33 options, or warrants may be issued with or without consideration, and
 34 may (but need not) be issued pro rata.

35 **(b) The terms and conditions of the rights, options, or warrants,**
 36 **including the rights, options, or warrants outstanding on July 1,**
 37 **2009, may include, without limitation, restrictions or conditions**
 38 **that:**

39 **(1) preclude or limit the exercise, transfer, or receipt of the**
 40 **rights, options, or warrants by:**

41 **(A) a person owning or offering to acquire a specified**
 42 **number or percentage of the outstanding shares or other**

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1 securities of the corporation; or
 2 (B) a transferee of the person described in clause (A); or
 3 (2) invalidate or void the rights, options, or warrants held by
 4 the person described in subdivision (1)(A) or a transferee
 5 described in subdivision (1)(B).

6 SECTION 13. IC 23-1-26-8 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) The articles of
 8 incorporation, bylaws, an agreement among shareholders, or an
 9 agreement between shareholders and the corporation may impose
 10 restrictions on the transfer or registration of transfer of shares of any
 11 class or series of shares of the corporation. A restriction does not affect
 12 shares issued before the restriction was adopted unless the holders of
 13 the shares are parties to the restriction agreement or voted in favor of
 14 the restriction.

15 (b) A restriction on the transfer or registration of transfer of shares
 16 is valid and enforceable against the holder or a transferee of the holder
 17 if the restriction is authorized by this section and its existence is noted
 18 conspicuously on the front or back of the certificate or is contained in
 19 the information statement required by section 7(b) of this chapter.
 20 Unless so noted **or contained**, a restriction is not enforceable against
 21 a person without knowledge of the restriction.

22 (c) A restriction on the transfer or registration of transfer of shares
 23 is authorized:

- 24 (1) to maintain the corporation's status when it is dependent on
- 25 the number or identity of its shareholders;
- 26 (2) to preserve exemptions under federal or state securities law;
- 27 or
- 28 (3) for any other reasonable purpose.

29 (d) A restriction on the transfer or registration of transfer of shares
 30 may, among other things:

- 31 (1) obligate the shareholder first to offer the corporation or other
- 32 persons (separately, consecutively, or simultaneously) an
- 33 opportunity to acquire the restricted shares;
- 34 (2) obligate the corporation or other persons (separately,
- 35 consecutively, or simultaneously) to acquire the restricted shares;
- 36 (3) require the corporation, the holders of any class of its shares,
- 37 or another person to approve the transfer of the restricted shares,
- 38 if the requirement is not manifestly unreasonable; or
- 39 (4) prohibit the transfer of the restricted shares to designated
- 40 persons or classes of persons, if the prohibition is not manifestly
- 41 unreasonable.

42 (e) For purposes of this section, "shares" includes a security

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convertible into or carrying a right to subscribe for or acquire shares.

SECTION 14. IC 23-1-29-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) **Unless directors are elected by written consent instead of at an annual meeting as permitted by section 4 of this chapter**, a corporation ~~must~~ **shall** hold a meeting of the shareholders annually at a time stated in or fixed in accordance with the bylaws. **However, if a corporation's articles of incorporation authorize shareholders to cumulate the shareholder's votes when electing directors as provided under IC 23-1-30-9, directors may not be elected by less than unanimous consent.**

(b) Annual shareholders' meetings may be held in or out of Indiana at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

(d) If the articles of incorporation or bylaws so provide, any or all shareholders may participate in an annual shareholders' meeting by, or through the use of, any means of communication by which all shareholders participating may simultaneously hear each other during the meeting. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.

SECTION 15. IC 23-1-29-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A corporation with more than fifty **(50)** shareholders must hold a special meeting of shareholders on call of its board of directors or the person or persons (including, but not limited to, shareholders or officers) specifically authorized to do so by the articles of incorporation or bylaws. If such corporation's articles of incorporation require the holding of a special meeting on the demand of its shareholders, but do not specify the percentage of votes entitled to be cast on an issue necessary to demand such special meeting, the board of directors may establish such percentage in the corporation's bylaws. Absent adoption of such a bylaw provision, the demand for a special meeting must be made by the holders of all of the votes entitled to be cast on an issue.

(b) A corporation with fifty (50) or fewer shareholders must hold a special meeting of shareholders:

(1) on call of its board of directors or the person or persons (including, but not limited to, shareholders or officers) specifically authorized to do so by the articles of incorporation or

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bylaws; or

(2) if the holders of at least twenty-five percent (25%) of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to such corporation's secretary one (1) or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(c) Special shareholders' meetings may be held in or out of Indiana at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(d) If not otherwise fixed under section 3 or 7 of this chapter, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

~~(d)~~ (e) Only business within the purpose or purposes described in the meeting notice required by section 5(c) of this chapter may be conducted at a special shareholders' meeting.

~~(e)~~ (f) If the articles of incorporation or bylaws so provide, any or all shareholders may participate in a special meeting of shareholders by, or through the use of, any means of communication by which all shareholders participating may simultaneously hear each other during the meeting. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.

SECTION 16. IC 23-1-29-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) A shareholder may waive any notice required by this article, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver **must be:**

(1) in writing;

(2) signed by the shareholder entitled to the notice; ~~must be in writing and be~~

(3) delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A shareholder's attendance at a meeting:

(1) waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(2) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

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SECTION 17. IC 23-1-33-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(b) **Unless the bylaws of a corporation specify otherwise as provided under IC 23-1-39-4 or a shorter term is specified in the bylaws for a director nominee failing to receive a specified vote for election,** the terms of all other directors expire at:

(1) the next; or

(2) **if the director's terms are staggered in accordance with section 6 of this chapter, the applicable second or third;** annual shareholders' meeting following their election. ~~unless their terms are staggered under section 6 of this chapter.~~

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) The term of a director elected to fill a vacancy expires at the end of the term for which the director's predecessor was elected.

(e) **Unless the bylaws of a corporation specify otherwise as provided under IC 23-1-39-4,** despite the expiration of a director's term, the director continues to serve until a successor is elected and qualifies or until there is a decrease in the number of directors.

SECTION 18. IC 23-1-33-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) A director may resign at any time by delivering written notice:

(1) to the board of directors, its chairman, or the secretary of the corporation; or

(2) if the articles of incorporation or bylaws so provide, to another designated officer.

~~(b) A resignation is effective when the notice is delivered unless the notice specifies a later effective date.~~

(b) A resignation is effective when the notice is delivered unless the notice specifies:

(1) a later effective date; or

(2) an effective date determined upon the happening of an event.

(c) **A resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that the resignation is irrevocable.**

SECTION 19. IC 23-1-34-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) ~~Unless~~ **Except to the extent that** the articles of incorporation or bylaws ~~provide otherwise,~~ **require that action by the board of directors be taken at**

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1 **a meeting**, action required or permitted by this article to be taken at a
 2 board of directors' meeting may be taken without a meeting if the
 3 action is taken by all members of the board. The action must be:

- 4 (1) evidenced by one (1) or more written consents describing the
 5 action taken;
 6 (2) signed by each director; ~~and~~
 7 (3) included in the minutes or filed with the corporate records
 8 reflecting the action taken; **and**
 9 (4) **delivered to the secretary.**

10 (b) Action taken under this section is effective when the last director
 11 signs the consent, unless the consent specifies a different prior or
 12 subsequent effective date. **A director's consent may be withdrawn**
 13 **by a revocation signed by the director and delivered to the**
 14 **corporation before the delivery to the corporation of unrevoked**
 15 **written consents signed by all the directors.**

16 (c) A consent signed under this section has the effect of a meeting
 17 vote and may be described as such in any document.

18 SECTION 20. IC 23-1-35-5 IS ADDED TO THE INDIANA CODE
 19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 20 1, 2009]: **Sec. 5. (a) A director's taking advantage, directly or**
 21 **indirectly, of a business opportunity may not be the subject of**
 22 **equitable relief, or give rise to an award of damages or other**
 23 **sanctions against the director, in a proceeding by or in the right of**
 24 **the corporation on the ground that the opportunity should have**
 25 **first been offered to the corporation, if one (1) or more of the**
 26 **following applies:**

27 (1) The opportunity and all material facts concerning the
 28 opportunity then known to the director were disclosed to or
 29 known by the board of directors or a committee of the board
 30 of directors before the director became legally obligated
 31 regarding the opportunity, and the board of directors or
 32 committee of the board of directors disclaimed the
 33 corporation's interest in the opportunity.

34 (2) The opportunity and all material facts concerning the
 35 business opportunity then known to the director were
 36 disclosed to or known by the shareholders entitled to vote
 37 before the director became legally obligated regarding the
 38 opportunity, and the shareholders disclaimed the
 39 corporation's interest in the opportunity.

40 (b) For purposes of subsection (a)(1), a business opportunity is
 41 disclaimed if approved in the manner provided in IC 23-1-35-2(c)
 42 as if the business opportunity were a conflict of interest

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1 transaction.

2 (c) For purposes of subsection (a)(2), a business opportunity is
3 disclaimed if approved in the manner provided in IC 23-1-35-2(d)
4 as if the business opportunity were a conflict of interest
5 transaction.

6 (d) In any proceeding seeking equitable relief or other remedies
7 against a director for the director allegedly improperly taking
8 advantage of a business opportunity, the fact that the director did
9 not employ the procedure described in subsection (a) before taking
10 advantage of the opportunity does not create an inference that the
11 opportunity should have been first presented to the corporation or
12 alter the burden of proof otherwise applicable to establish that the
13 director breached a duty to the corporation under the
14 circumstances.

15 SECTION 21. IC 23-1-38.5-3 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) If a domestic or
17 foreign business corporation, a nonprofit corporation, or another entity
18 may not be a party to a merger without the approval of the department
19 of financial institutions or the department of insurance, the corporation
20 or other entity may not be a party to a transaction under this chapter
21 without the prior approval of the department of financial institutions or
22 the department of insurance.

23 (b) Property held in trust or for a charitable purpose under the
24 law of this state by a domestic or foreign other entity shall not, by
25 any transaction under this chapter, be diverted from the objects
26 for which it was donated, granted, or devised.

27 SECTION 22. IC 23-1-38.5-11, AS AMENDED BY P.L.130-2006,
28 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
29 JULY 1, 2009]: Sec. 11. (a) A plan of entity conversion must include:

- 30 (1) a statement of the type of other entity that the surviving entity
31 will be and, if it will be a foreign other entity, its jurisdiction of
32 organization;
- 33 (2) the terms and conditions of the conversion;
- 34 (3) the manner and basis of converting the shares or interests of
35 the converting entity following its conversion into shares,
36 interests, or other securities, obligations, rights to acquire interests
37 or other securities of the surviving entity or cash, other property,
38 or any combination of the types of assets referred to in this
39 subdivision; and
- 40 (4) the full text, as in effect immediately after consummation of
41 the conversion, of the organic documents of the surviving entity.

42 (b) The plan of entity conversion may also include a provision

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that the plan may be amended before filing articles of entity conversion, except that subsequent to approval of the plan by the shareholders or interest holders the plan may not be amended to change:

(1) the amount or kind of shares or other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, or other property to be received under the plan by the shareholders or interest holders; or

(2) the organic documents that will be in effect immediately following the conversion, except for changes permitted by a provision of the organic law of the surviving entity comparable to IC 23-1-38-2.

SECTION 23. IC 23-1-39-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. Unless the articles of incorporation or section 4 of this chapter provide otherwise, only a corporation's board of directors may amend or repeal the corporation's bylaws.

SECTION 24. IC 23-1-39-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) This section does not apply to any corporation that has a class of voting shares registered with the Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934.

(b) Unless the articles of incorporation specifically prohibit the adoption of a bylaw under this section, alter the vote specified in IC 23-1-30-9(a), or provide for cumulative voting, a corporation may elect in the corporation's bylaws to be governed in the election of directors as follows:

(1) Each vote entitled to be cast may be voted for or against up to that number of candidates that is equal to the number of directors to be elected, or a shareholder may indicate an abstention, but without cumulating the votes.

(2) To be elected, a nominee must have received a plurality of the votes cast by holders of shares entitled to vote in the election at a meeting at which a quorum is present. However, a nominee who is elected but receives more votes against than for election shall serve as a director for a term that ends on the date that is the earlier of:

(A) ninety (90) days after the date on which the voting results are determined; or

(B) the date on which an individual is selected by the board of directors to fill the office held by the director, which

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selection constitutes the filling of a vacancy by the board to which IC 23-1-33-9 applies.

Subject to subdivision (3), a nominee who is elected but receives more votes against than for election shall not serve as a director beyond the ninety (90) day period described in clause (A).

(3) The board of directors may select a qualified individual to fill the office held by a director who received more votes against than for election.

(c) Subsection (b) does not apply to an election of directors by a voting group if:

(1) at the expiration of the time fixed under a provision requiring advance notification of director candidates; or

(2) absent a provision described in subdivision (1), at a time fixed by the board of directors that is not more than fourteen (14) days before notice is given of the meeting at which the election is to occur;

there are more candidates for election by the voting group than the number of directors to be elected, one (1) or more of whom are properly proposed by shareholders. An individual is not considered a candidate for purposes of this subsection if the board of directors determines before the notice of meeting is given that the individual's candidacy does not create a bona fide election contest.

(d) A bylaw under which a corporation elects to be governed by this section may be repealed:

(1) if originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides; or

(2) if adopted by the board of directors, by the board of directors.

SECTION 25. IC 23-1-40-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the secretary of state for filing articles of merger or share exchange setting forth:

(1) the ~~plan of~~ **name of the surviving or acquiring corporation following the** merger or share exchange;

(2) if shareholder approval was not required, a statement to that effect;

(3) if approval of the shareholders of one (1) or more corporations party to the merger or share exchange was required:

(A) the designation, number of outstanding shares, and

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number of votes entitled to be cast by each voting group entitled to vote separately on the ~~plan~~ **merger or share exchange** as to each corporation; and

(B) either the total number of votes cast for and against the ~~plan~~ **merger or share exchange** by each voting group entitled to vote separately on the ~~plan~~ **merger or share exchange** or the total number of undisputed votes cast for the ~~plan~~ **merger or share exchange** separately by each voting group and a statement that the number cast for the ~~plan~~ **merger or share exchange** by each voting group was sufficient for approval by that voting group.

(b) Unless a delayed effective date is specified, a merger or share exchange takes effect when the articles of merger or share exchange are filed.

(c) The surviving corporation resulting from a merger may, after the merger has become effective, file for record with the county recorder of each county in Indiana in which the corporation has real property at the time of the merger, the title to which will be transferred by the merger, a file-stamped copy of the articles of merger. If the ~~plan~~ **articles** of merger sets forth amendments to the articles of incorporation of the surviving corporation that change its corporate name, a file-stamped copy of the articles of merger may be filed for record with the county recorder of each county in Indiana in which the surviving **or acquiring** corporation has any real property at the time the merger becomes effective. A failure to record a copy of the articles of merger under this subsection does not affect the validity of the merger or the change in corporate name.

SECTION 26. IC 23-1-41-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) ~~A corporation may, on the terms and conditions and for the consideration determined by the board of directors:~~ **The approval of the shareholders of a corporation is not required unless the articles of incorporation require the approval of the shareholders to:**

(1) sell, lease, exchange, or otherwise dispose of all, or substantially all, of ~~its~~ **the corporation's** property in the usual and regular course of business;

(2) mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of ~~its~~ **the corporation's** property whether or not in the usual and regular course of business; or

(3) transfer any or all of ~~its~~ **the corporation's** property to a corporation all the shares of which are owned by the corporation.

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(b) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (a) is not required.

SECTION 27. IC 23-1-41-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property (with or without the good will); otherwise than in the usual and regular course of business; on the terms and conditions and for the consideration determined by the corporation's board of directors; if the board of directors proposes and its shareholders approve the proposed transaction:

(b) For a transaction to be authorized:

(1) the board of directors must recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and

(2) the shareholders entitled to vote must approve the transaction.

(c) The board of directors may condition its submission of the proposed transaction on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with IC 23-1-29-5. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and must contain or be accompanied by a description of the transaction.

(a) A sale, lease, exchange, or other disposition of assets, other than a disposition described in section 1 of this chapter, requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. If a corporation retains a business activity that represented at least twenty-five percent (25%) of total assets at the end of the most recently completed fiscal year, and twenty-five percent (25%) of either income from continuing operations before taxes or revenues from continuing operations for the fiscal year, in each case of the corporation and the corporation's subsidiaries on a consolidated basis, the corporation is conclusively considered to have retained a significant continuing business activity.

(b) A disposition that requires approval of the shareholders under subsection (a) shall be initiated by a resolution by the board

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of directors authorizing the disposition. After adoption of the resolution, the board of directors shall submit the proposed disposition to the shareholders for the shareholder's approval. The board of directors shall transmit to the shareholders a recommendation that the shareholders approve the proposed disposition, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances the board of directors should not make the recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination.

(c) The board of directors may condition the board of director's submission of a disposition to the shareholders under subsection (b) on any basis.

(d) If:

(1) a disposition is required to be approved by the shareholders under subsection (a); and

(2) the approval is to be given at a meeting;

the corporation shall notify each shareholder, whether the shareholder is entitled to vote, of the meeting of shareholders at which the disposition is to be submitted for approval in accordance with IC 23-1-29-5. The notice must state that the purpose or that one (1) of the purposes of the meeting is to consider the disposition and shall contain a description of the disposition, including the terms and conditions of the disposition and the consideration to be received by the corporation.

(e) Unless the articles of incorporation or the board of directors (acting under subsection (c)) require a greater vote or a vote by voting groups, the transaction to be authorized must be approved by a majority of all requires a greater vote, or a greater number of votes to be present, the approval of a disposition by the shareholders requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the transaction: disposition exists.

(f) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned (subject to any contractual rights) without further shareholder action:

(f) After a disposition has been approved by the shareholders under subsection (b), and at any time before the disposition has been consummated, the disposition may be abandoned by the corporation without action by the shareholders, subject to any contractual rights of other parties to the disposition.

(g) A transaction disposition that constitutes a distribution is

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governed by IC 23-1-28 and not by this section.

(h) A disposition of assets in the course of dissolution under IC 23-1-45, IC 23-1-46, IC 23-1-47, or 23-1-48 is not governed by this section.

(i) The assets of a direct or indirect consolidated subsidiary shall be considered the assets of the parent corporation for the purposes of this section.

SECTION 28. IC 23-1-44-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4.5. As used in this chapter, "preferred shares" means a class or series of shares in which the holders of the shares have preference over any other class or series with respect to distributions.**

SECTION 29. IC 23-1-44-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(1) Consummation of a plan of merger to which the corporation is a party if:

(A) shareholder approval is required for the merger by IC 23-1-40-3 or the articles of incorporation; and

(B) the shareholder is entitled to vote on the merger.

(2) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan.

(3) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one (1) year after the date of sale.

(4) The approval of a control share acquisition under IC 23-1-42.

(5) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(b) This section does not apply to the holders of shares of any class or series if, on the date fixed to determine the shareholders entitled to

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1 receive notice of and vote at the meeting of shareholders at which the
 2 merger, plan of share exchange, or sale or exchange of property is to be
 3 acted on, the shares of that class or series were

- 4 (1) registered on a United States securities exchange registered
 5 under the Exchange Act (as defined in IC 23-1-43-9); or
 6 (2) traded on the National Association of Securities Dealers, Inc.
 7 Automated Quotations System Over-the-Counter Markets =
 8 National Market Issues or a similar market.

9 a covered security under Section 18(b)(1)(A) or 18(b)(1)(B) of the
 10 Securities Act of 1933, as amended.

11 (c) The articles of incorporation as originally filed or any
 12 amendment to the articles of incorporation may limit or eliminate
 13 the right to dissent and obtain payment for any class or series of
 14 preferred shares. However, any limitation or elimination contained
 15 in an amendment to the articles of incorporation that limits or
 16 eliminates the right to dissent and obtain payment for any shares:

- 17 (1) that are outstanding immediately before the effective date
 18 of the amendment; or
 19 (2) that the corporation is or may be required to issue or sell
 20 after the effective date of the amendment under any exchange
 21 or other right existing immediately before the effective date
 22 of the amendment;

23 does not apply to any corporate action that becomes effective
 24 within one (1) year of the effective date of the amendment if the
 25 action would otherwise afford the right to dissent and obtain
 26 payment.

27 (c) (d) A shareholder:

- 28 (1) who is entitled to dissent and obtain payment for the
 29 shareholder's shares under this chapter; or
 30 (2) who would be so entitled to dissent and obtain payment but for
 31 the provisions of subsection (b);

32 may not challenge the corporate action creating (or that, but for the
 33 provisions of subsection (b), would have created) the shareholder's
 34 entitlement.

35 (e) Subsection (d) does not apply to a corporate action that was
 36 approved by less than unanimous consent of the voting
 37 shareholders under IC 23-1-29-4.5(b) if both of the following
 38 apply:

- 39 (1) The challenge to the corporate action is brought by a
 40 shareholder who did not consent and as to whom notice of the
 41 approval of the corporate action was not effective at least ten
 42 (10) days before the corporate action was effected.

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1 (2) The proceeding challenging the corporate action is
 2 commenced not later than ten (10) days after notice of the
 3 approval of the corporate action is effective as to the
 4 shareholder bringing the proceeding.
 5 SECTION 30. IC 23-1-53-2 IS REPEALED [EFFECTIVE JULY 1,
 6 2009].

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